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guished men into the service of the state and he advocates the enactment of legislation forbidding the appointment of senators and deputies to public office, not only during the term for which they were elected, but for a certain period following the expiration of their terms, with a view to removing what has become a serious abuse (Vol. II, p. 279). He also advocates the enactment of more stringent legislation against corrupt practices in elections.

M. Duguit's treatise gives no consideration whatever to the judiciary or to political parties. The reason for this omission is perhaps due to the fact that the French judiciary is not dealt with at all by the constitutional laws of the Republic, while political parties as yet are entirely extra legal organizations. While the omission is defensible upon grounds of logic and scientific arrangement, one cannot but regret that a work which treats with so much detail the executive and legislative branches of the government should wholly ignore the judiciary and, we may add, the part played by the political parties. But barring these faults, if such they be, M. Duguit's work is undoubtedly the most comprehensive general treatise on the French state that has yet been written, though Esmein's *Droit Constitutionnel* perhaps surpasses it in brilliancy of treatment and originality. Its value to students is greatly increased by the comparative method of treatment and by the abundance of bibliographical material cited. On nearly every page one finds citations to the latest and best literature in French, German, English and Italian to which the reader may go for more detailed information. Indeed, the familiarity of the author with so extensive a mass of literature compels admiration as does also the abundant evidence of thorough and painstaking effort throughout the entire work.

J. W. GARNER.

*The Origin and Growth of the American Constitution.* By HANNIS TAYLOR. (Boston and New York: Houghton, Mifflin Company, 1911. Pp. xlii, 676.)

Mr. Taylor has published much on public law. To his previous achievements he has now added a volume in which, according to the claims of the title page, "the documentary evidence as to the making of the entirely new plan of federal government embodied in the exist-

ing Constitution of the United States, is, for the first time, set forth as a complete and consistent whole."

In the first chapter the author takes all previous commentators, from De Tocqueville to Bryce (1888), to task for not having consulted the documents, where they would have discovered that the Constitution was not handed down from Heaven, nor drawn up by inspired men, nor yet evolved by the convention after that body assembled, but that it was outlined on a "wholly novel theory" by Pelatiah Webster in 1783. The second chapter deals with "The Great Discovery of Modern Political Science," which is a federal legislature of two houses with power to tax and provide for the enforcement of its laws. Incidentally another great discovery is disclosed, that the author is the first to discover that Pelatiah Webster was the first man ever to conceive this brilliant idea. After tracing the development of the typical American state from the primitive political institutions of the German forest to the American constitutions of 1776, the history of federalism from the Achaian league to the Seven United Provinces of the Netherlands, and of American confederations from 1643 to 1777, one chapter to each, he returns to Webster's "Great Invention," which turns out to be the present Constitution.

When the convention of 1787 is taken up we are informed at the outside that the Virginia plan, the Pinckney resolutions and the Hamilton draft were drawn from one common source, the pamphlet of Pelatiah Webster. The work of the convention is then treated in some detail; also the adoption of the Constitution. The twelve amendments are given an historical setting, African slavery and its consequences are traced from 1619 to 1900, following which comes an account of constitutional growth from 1804 to 1865 through legislation, resolution and judicial decisions. The chapter on the Civil War amendments and their interpretation is followed by one on our colonial system and the Monroe Doctrine. The more recent development of the Constitution is then taken up in connection with interstate commerce, trusts and monopolies, and a final chapter contains some reflections on the outcome of our growth. A lengthy appendix gives many important documents beginning with the Confederation of 1643 and ending with the Constitution and including the so-called Mecklenburg Declaration, Pelatiah Webster's contributions and the various plans submitted to the convention.

From the amount of attention given to Pelatiah Webster it is evident that the author thinks that his discoveries in reference to this gentle-

man are one of the chief justifications for the publication of the book. He tells us that the first call for a convention was issued in May, 1781, by Pelatiah Webster, who thus early pointed out the defects of the Confederation. February 16, 1783, Webster returns to the attack in a "Dissertation" which, says Mr. Taylor, contains the first suggestion of a federal government with power to tax. He also says that it contains the entire plan of the Constitution, worked out four years before the convention ever met. It was published at the very doors of Congress and all the world knew it by 1787. Madison was in Philadelphia on the day of its publication and was acquainted with the author; Hamilton also was there on that day, serving in Congress from November, 1782, to October, 1783, hence he must have been familiar with the pamphlet; Charles Pinckney served in Congress from 1784 to 1789 and must have known it. In view of these facts "only the blind and infatuated will contend that these vigilant and ambitious young statesmen, intent upon improving conditions then crying out for a remedy, did not read and master the contents of the great document, the first to propose the construction of a new federal system, published 'at the seat of government,' under their very eyes, by Pelatiah Webster on February 16, 1783."

"In response to his [Webster's] first bugle call," continues Mr. Taylor, "made as Madison tells us as early as 1781, the 'Continental Convention,' he was first to propose, assembled in May, 1787, to make a new constitution; in response to his second call, made February 16, 1783, three men of genius went to that convention bearing with them as a basis for its action, in rigidly constructed formulas, his invention, . . . In the full sense of the term the three draftsmen were men of genius, who did all that remained for them to do. The great invention having been made in advance, they could not make it over again; it only remained for them to restate it and adapt it for the practical end for which it was designed." Further, a certain sequence of events supports this view. The first call for a convention was made by Webster in 1781. In 1782 the Legislature of New York adopted resolutions, "which Hamilton probably drafted," inviting Congress to recommend a convention. April 1, 1783, six weeks after the publication of Webster's second call, Hamilton for the first time mentioned the matter in Congress and April 28 Congress appointed a committee on the subject (161-2).

Reasoning on the basis of probabilities the author appears to have made out a pretty good case for his client, but there are a few flaws

in the reasoning which one may plead in extenuation for not being found among the "sane and serious" persons who no longer doubt. The first is that if Pelatiah Webster ever called for a convention previous to 1781 he did not anticipate Hamilton as that gentleman exposed the defects of the Confederation and suggested a convention in a letter to James Duane dated September 3, 1780;<sup>1</sup> he also prepared another paper on the defects of the Confederation and ended it with a call for a convention July 1, 1783,<sup>2</sup> facts which Mr. Taylor has ignored.

Another flaw is the fact that Webster was not the first to suggest that the federal government be given the right to use force. March 12, 1781, Madison presented a report recommending to the Legislatures to confer this power on the United States.<sup>3</sup>

An examination of Webster's pamphlet shows that it does contain a few suggestions embodied in the Constitution, but several of these were commonplaces in political philosophy and, to a great extent, in practice in the state constitutions, such as the separation of the powers, legislatures of two chambers, and no grant of money without an appropriation. Contrast with these some of his fanciful suggestions which were not used: That the delegates to the national Legislature should be elected and recalled by the states in whatever manner and as often as they saw fit; that the great ministers of state should form a council to which every bill should be presented after its second reading for criticism and that their criticisms and suggestions should be entered on the journals and sent to the other house along with the bill; that there should be a chamber of commerce, made up of representatives of the merchants, to advise Congress (for which his name should be revered by the "interests"); that, in case of invasion, the two houses should choose a dictator; that, in order to enforce obedience, Congress should summon the disobedient before it and punish them. To this last he did offer an alternative proposition, that Congress should send into any state a force sufficient to suppress opposition to its acts and orders, but, as we have seen, he was anticipated in this by Madison.

It is true that Hamilton's paper of 1783 was issued subsequent to the publication of Webster's, but, since he had anticipated him in calling for the convention and had drawn up the New York resolution demanding it before the publication of Webster's paper, and since

<sup>1</sup> Hamilton. Political and Official Writings, I, 151 ff

<sup>2</sup> Works, ii, 276 ff.

<sup>3</sup> Bancroft, History of the Formation of the Constitution, ii, 23.

Madison had anticipated Webster in one of the most essential elements of the new Constitution, is it not just as probable that these brilliant young statesmen, already full of experience in public affairs, should be able to work out a "new system" as it is that a comparatively unknown man, with little, if any, such experience, should do it? Indeed, following probabilities, it seems almost ridiculous to assume that Webster's paper, which, although it contained several good suggestions, offered so many absurd propositions, should have been used as the basis of our present Constitution. If it was so used, it is very strange that we have no mention of it anywhere. Several times Mr. Taylor reiterates Langlois's saying, "No documents, no history." He has failed to bring forward a single document showing beyond mere probability any connection between Webster's paper and the Constitution.

In his study of the convention Mr. Taylor can hardly be said to have added much, if anything, to our stock of information on that subject. He confesses that the Pinckney draft furnished in 1818 is not genuine, yet refers to it for Pinckney's ideas (33, 415). After having chastised the older historians for following one rut he falls into another and speaks of the three-fifths rule and direct taxation as part of a compromise on representation (198-9) and of the fugitive slave clause as a compromise (234). When we find him referring to the smaller states as "justly" insisting on equal representation in at least one house of the Legislature (186), we must believe that the full significance of the compromise on representation has escaped him. On the other hand, the method of electing the executive, the provision for the admission of new states, and the assumption of the debt of the Confederation are not spoken of as compromises at all, though at least the first two were important ones. And one is surprised to find no mention whatever of the clause relating to navigation acts, which formed a vital part of the compromise on the importation of slaves.

It is pleasing to turn to the more valuable part of the book, that relating to the growth of the Constitution since 1789. The crises, the debates and the great judicial decisions down to the Civil War are discussed in an illuminating way, yet, even here one must beg pardon for refusing to call in an alienist simply because he continues to "doubt that the conclusions reached by the Supreme Court in the Dred Scott case were in perfect accord with the positive law as defined in the compromises of the Constitution" (293). Especially valuable is Chapter XIII, which treats of the growth of the Constitution through judicial decision. Herein the author shows how the excessive individualism of

the closing days of the eighteenth century has been, or rather is being transformed into a nobler collectivism through the court's interpretation of liberty and property. For this part of the book the author is due the gratitude of students and publicists. They will also be glad to have the annotated text of the Constitution in the appendix. However, in spite of a few additions of very recent cases, it is doubtful if this is any improvement over the text published in the House Manual.<sup>4</sup> Indeed, the latter has one very distinct superiority in that, by means of reference numbers, it indicates to what particular part of any section the case cited refers. Unless Mr. Taylor is the author of this text also, it certainly is strange that he should have copied verbatim some of the historical footnotes without quotation marks or acknowledgment of any kind.

DAVID Y. THOMAS.

*The First Decade of the Australian Commonwealth: A Chronicle of Contemporary Politics, 1901-1910.* By HENRY GILES TURNER. (Melbourne: Mason, Firth & M'Cutcheon, 1911. Pp. 320.)

Mr. Turner, who is already known as the author of the standard history of the colony of Victoria, has rendered a notable service to those who are interested in Australian politics by issuing this timely volume. It is distinctly a study in politics. The parties and their platforms, the legislation of the various sessions, the frequent changes in ministries, are all described. When the Commonwealth was inaugurated, in 1901, much was expected from it. That so little was accomplished in the first decade was due to the unstable equilibrium of the parties. Eight ministries in ten years indicate the lack of continuity in policies. The first session of the present labor administration can boast of an unusual number of striking enactments, such as the Australian Notes, the Federal Land Tax, the two sweeping proposed amendments to the Constitution and the Northern Territory acts. In dealing with such recent and much-disputed topics the point of view of the author must be borne in mind. Mr. Turner was for many years the president of one of the great banks of Victoria although at the same time interested in historical and literary work. Naturally

<sup>4</sup> 60th Congress, 2d session.